

Remarks

Claims 1-24 have been amended. The amendments to the claims were made to better define Applicants' invention and to place the claims into a format that is more reflective of standard U.S. patent prosecution practice. As such, no new matter has been introduced by any of the amendments.

1. Rejection under 35 U.S.C. § 102(b)

Claims 1-24 have been rejected as being anticipated by U.S. Patent 5,437,774 to Laustsen ("Laustsen"). According to the Examiner, Laustsen discloses Applicants' claimed method and apparatus.

Applicants respectfully disagree with the Examiner's assessment of the applicability of Laustsen to Applicants' claimed invention. Laustsen teaches a method for separating high molecular weight compounds in solution (a load stream) from each other using a combination of electric potential and differential pressure as a means for initiating the selective passage of one of the compounds through a separation membrane into a second solution (a dialysate) while the other of the compounds remains contained between the separation membrane and a retention membrane. The use of differential pressure as a separating-enhancing means appears in all of the Laustsen examples and reflects the general teaching in Laustsen that "migration of the molecular species to be separated is established by controlling electrical potential and differential pressure across the separation and retention membranes" (column 5, lines 47-52, emphasis added).

In contrast, Applicants claim a method of separating a non-pathogenic biological contaminant from a mixture containing the contaminant and a compound across a membrane in which all substantial transmembrane migration of one of the two components is initiated solely by application of a current. Unlike the described invention of Laustsen, no pressure or fluid force is necessary in Applicants' invention to effect separation of compounds.

Further, Laustsen teaches the use of charged (isoelectric) membranes as a means of enhancing separation of the described high molecular weight compounds (see, *e.g.*, the Experimental section and column 4, lines 3-18). "For the separation of anionic proteins from the aqueous media, the separation membranes will be cationic (permitting the passage of anionic species including the proteins) and the retention membranes will be anionic (blocking such passage). Conversely, for the separation of cationic proteins from the aqueous media, the separation membranes will be anionic and the retention membranes will be cationic" (column 3, lines 10-18). In contrast to this teaching by Laustsen, Applicants' claimed invention relies on the application of an electric potential alone for substantially all transmembrane

migration of the components to be separated. For at least these reasons, claims 1-24 are novel and unobvious over Laustsen. Applicants therefore request that the rejection of these claims be withdrawn.

2. Rejection under Obviousness-Type Double Patenting

A. U.S. Patent Application No. 09/887,208

Claims 1-24 have been provisionally rejected under obviousness-type double patenting as unpatentable over claims 43-114 of copending Patent Application No. 09/887,208 ("the '208 application"). While the Examiner acknowledges that the '208 application does not teach that the separation occurs in a membrane-based separation means, such as a membrane filtration, the Examiner asserts that it would have been obvious to a skilled artisan to modify the claims of the '208 application because the claims of the subject application recite the separation of the same types of materials from the same types of biological liquids, and therefore the same types of membranes must be used.

While Applicants disagree with the Examiner's rejection, Applicants have, in order to expedite prosecution of the subject application, filed a terminal disclaimer over the '208 application.

B. U.S. Patent Application No. 10/037,004

Claims 1-24 have been provisionally rejected under obviousness-type double patenting as unpatentable over claims 1-44 of copending Patent Application No. 10/037,004 ("the '004 application") for the same reasons stated in section A above.

Applicants intend to either abandon the '004 application or to amend the claims to make them patentably distinct from the claims in the subject application if the claims in the subject application are found allowable.

C. U.S. Patent Application No. 09/887,371

Claims 1-24 have been provisionally rejected under obviousness-type double patenting as unpatentable over claims 43-91 of copending Patent Application No. 09/887,371 ("the '371 application") for the same reasons stated in section A above.

While Applicants disagree with the Examiner's rejection, Applicants have, in order to expedite prosecution of the subject application, filed a terminal disclaimer over the '371 application.


3. **Conclusion**

The foregoing amendments and remarks are being made to place the application in a condition for allowance. Applicant respectfully requests reconsideration and the timely allowance of the pending claims. Should the Examiner find that an interview would be helpful to further prosecution of this application, he is invited to telephone the undersigned at his convenience.

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **Constructive Petition for Extension of Time** in accordance with 37 C.F.R. 1.136(a)(3).

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